

## **REMARKS**

The above amendments and these remarks are responsive to the non-final Office action dated May 4, 2005, and are being submitted under 37 C.F.R. § 1.111. Claims 1-14 are pending in the application. In the Office action, the Examiner (1) rejected claims 1 and 12-14 as being anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 6,592,578 to Henniges et al. ("Henniges"); and (2) rejected claims 2-11 as being obvious under 35 U.S.C. § 103(a) over Henniges in view of U.S. Patent No. 5,720,502 to Cain ("Cain") (claims 2-8), in view of U.S. Patent No. 4,565,193 to Streli ("Streli") (claims 9 and 10), or in view of U.S. Patent No. 6,623,486 to Weaver et al. ("Weaver") (claim 11). Applicants traverse the rejections, contending that rejected claims 1-14 are neither anticipated nor obvious. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicants would like to patent now, applicants have canceled claims 2 and 5-8, have amended claims 1, 3, 4, 9, and 12-14, and have added new claims 31-33. Furthermore, applicants have presented arguments showing that claims 1, 3, 4, 9-14, and 31-33 are neither taught nor suggested by any of the references of record. Accordingly, applicants respectfully request reconsideration of the rejected claims, and prompt issuance of a Notice of Allowability covering all of the pending claims.

### ***I. Claim Rejections – 35 U.S.C. §§ 102 and 103***

The Examiner rejected claim 1 as being anticipated by Henniges. Applicants traverse this rejection. Henniges does not teach or suggest every element of claim 1. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicants would like to patent now,

applicants have amended claim 1. Support for the amendment to claim 1 is provided, for example, in claim 2, among others. Applicants reserve the right to pursue original claims 1 and/or 2 at a later time.

Independent claim 1, as amended, is directed to a set for bone fixation:

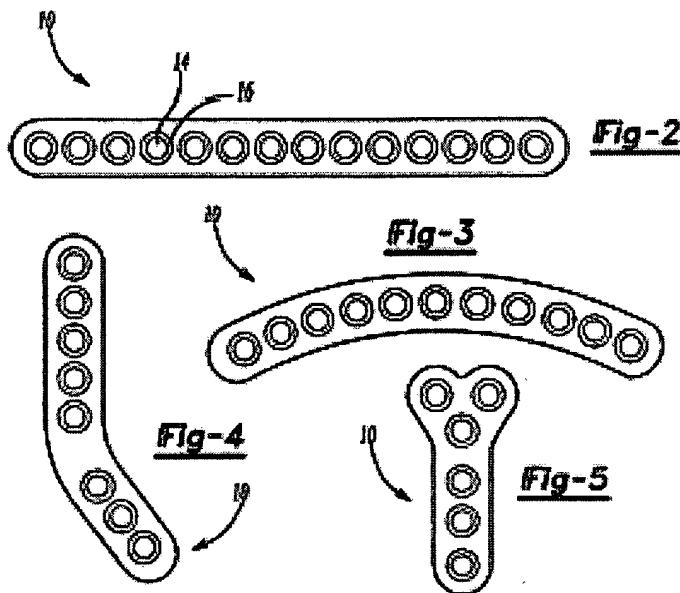
1. (Currently Amended) A set for bone fixation, comprising:  
at least two bone plates, each bone plate being configured to be secured to a left half or a right half of a skeleton and including a distinct color that indicates the left half or the right half to which the bone plate is configured to be secured.

Claim 1 is patentable over the cited references, either alone or in combination, because none of these references teaches or suggests bone plates with “a distinct color that indicates the left half or the right half [of a skeleton] to which the bone plate is configured to be secured,” as recited by claim 1.

Henniges relates to bioabsorbable bone plates. The bone plates are disclosed to have a rigid state and a deformable state produced from the rigid state by heating the bone plates. In the deformable state, the bone plates can be deformed according to the contours of particular bones being repaired. Henniges also discloses, as an additional feature, the bone plates being color coded “for easy identification during a surgical procedure” (col. 6, lines 44-46). In particular, Henniges states “by manufacturing the plates 10 with a unique color associated with each unique shape and size, confusion will be minimized and time will be saved.” (col. 6, lines 49-51, emphasis added by applicants)

Henniges does not teach or suggest bone plates with “a distinct color that indicates the left half or the right half [of a skeleton] to which the bone plate is

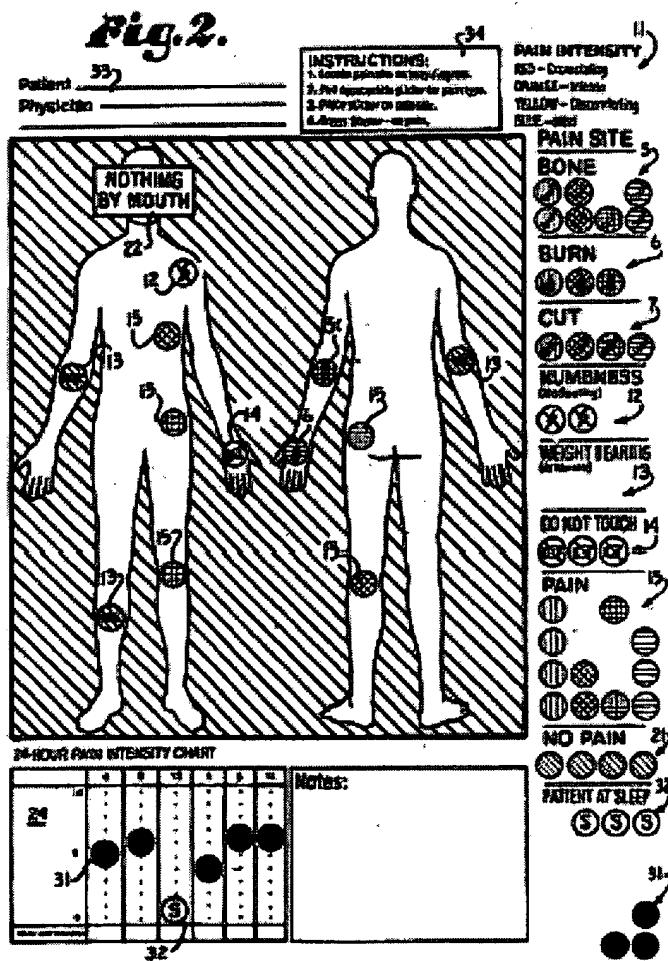
configured to be secured," as recited by claim 1. In particular, the bone plates of Henniges are manufactured as generic plates:



These generic plates allow the bone plates to be deformed according the contour of various target bones. Because these plates are deformable, each and every plate disclosed by Henniges apparently can be deformed in different ways for use on the left half and the right half of the skeleton. Accordingly, it would not have been obvious to manufacture these generic plates with a color that indicates a left half or a right half of skeleton for each plate, because the contour of the bone plate (and thus a left half or right half to which the plate is secured) is determined, in Henniges, after manufacture and thus after color coding each bone plate.

Cain relates to method and apparatus for communicating pain location and intensity. In particular, Cain discloses pain intensity charts, such as the chart of Figure 2, reproduced below. The charts can include patient views, such as front and back silhouettes of a body in Figure 2, or left and right side views (see Figure 4). Stickers can

be placed on the areas of the chart to indicate, for example, areas of pain. The intensity of the pain is indicated by a color code. For example, in Figure 2, the colors red, orange, yellow, and blue represent decreasing pain intensity.

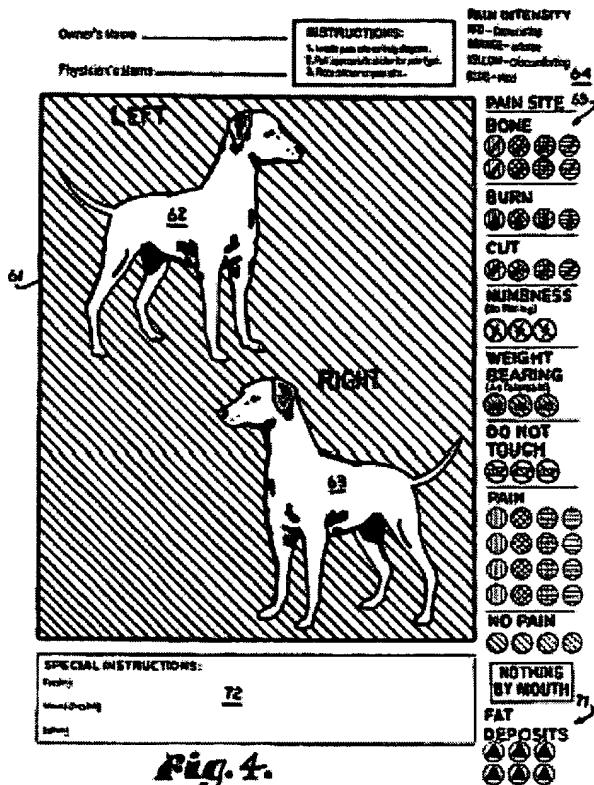


In the Office action, the Examiner characterized Cain as teaching

a method for distinguishing the left half of the skeleton from the right half of the skeleton, in this case related to pain. This teaching shows that it [is] known in the art to use color-coding methods to differentiate between the left and right half of the skeleton for various reasons. (Office action, May 4, 2005, page 3)

Applicants strongly disagree with this characterization. Cain does not teach or suggest colors to differentiate halves of a skeleton. Instead, Cain discloses colors to indicate

pain intensity. In Cain, left and right halves of a skeleton are differentiated not by color, but by position within a silhouette and/or by text:



Accordingly, Cain does not teach or suggest any correspondence between color and position and particularly not a distinct color that indicates the left half or the right half [of a skeleton], as recited by claim 1.

The Examiner also cited Streli and Weaver, respectively, in rejection of claims 10 and 11. Neither of these references teaches or suggests bone plates including a distinct color, as recited by claim 1.

In summary, none of the references of record, alone or in combination, teach or suggest every element of claim 1. Claim 1 thus should be allowed. Claims 3, 4, 9-14, and 31-33, which depend from claim 1, also should be allowed for at least the same reasons as claim 1.

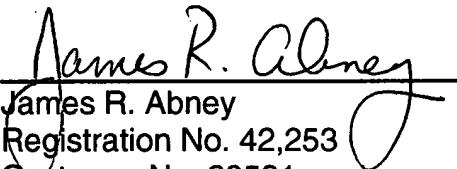


### Conclusion

Applicants believe that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicants respectfully request that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record.

Respectfully submitted,

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### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on August 4, 2005.

  
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Lisa Holstein